

9
No. 97-843

FILED

NOV 10 1998

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States
October Term, 1998

AURELIA DAVIS, as next friend of LASHONDA D.,
Petitioner,
vs.

MONROE COUNTY BOARD OF EDUCATION, et al.,
Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals
For The Eleventh Circuit

**BRIEF AMICI CURIAE
IN SUPPORT OF PETITIONER**

[*Amici* Listed On Inside Cover]

HORVITZ & LEVY LLP
DAVID S. ETTINGER
LISA R. JASKOL
MARY-CHRISTINE SUNGAILA*
**Counsel of Record*
15760 Ventura Boulevard,
18th Floor
Encino, California 91436-3000
(818) 995-0800

NOW LEGAL DEFENSE
AND EDUCATION FUND
MARTHA F. DAVIS
JULIE GOLDSCHIED
YOLANDA S. WU
99 Hudson Street,
12th Floor
New York, New York
10013-2871
(212) 925-6635

Attorneys for Amici Curiae

NOW LEGAL DEFENSE AND EDUCATION FUND,
AMERICAN ASSOCIATION OF UNIVERSITY
WOMEN, AMERICAN JEWISH CONGRESS
COMMISSION FOR WOMEN'S EQUALITY,
CALIFORNIA WOMEN'S LAW CENTER, CENTER
FOR ADVANCEMENT OF PUBLIC POLICY, CENTER
FOR WOMEN POLICY STUDIES, CONNECTICUT
WOMEN'S EDUCATION AND LEGAL FUND, INC.,
EQUAL RIGHTS ADVOCATES, FEMINIST
MAJORITY FOUNDATION, LAMBDA LEGAL
DEFENSE AND EDUCATION FUND, MS.
FOUNDATION FOR WOMEN, MYRA SADKER
ADVOCATES FOR GENDER EQUITY, NATIONAL
ALLIANCE OF SEXUAL ASSAULT COALITIONS,
NATIONAL ASSOCIATION FOR GIRLS AND
WOMEN IN SPORT, NATIONAL COALITION FOR
SEX EQUITY IN EDUCATION, NATIONAL
ORGANIZATION FOR WOMEN FOUNDATION,
NATIONAL WOMEN'S HISTORY PROJECT,
NORTHWEST WOMEN'S LAW CENTER,
SURVIVORS OF EDUCATOR SEXUAL ABUSE AND
MISCONDUCT EMERGE, INC., TEXAS CIVIL
RIGHTS PROJECT, TITLE IX ADVOCACY PROJECT,
TITLE IX ADVOCATES, THE UNITED STATES
STUDENT ASSOCIATION, WOMEN &
PHILANTHROPY, WOMEN EMPLOYED, WOMEN
LAWYERS ASSOCIATION OF LOS ANGELES, THE
WOMEN'S LAW CENTER OF MARYLAND, INC.,
AND WOMEN'S LAW PROJECT

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	1
STATEMENT OF THE CASE	3
ARGUMENT	4
I. PEER SEXUAL HARASSMENT THAT CREATES A DISCRIMINATORY ENVIRONMENT HAS A DIRECT AND DEVASTATING IMPACT ON STUDENTS' EDUCATIONAL OPPOR- TUNITIES, EMOTIONAL DEVELOPMENT, AND LONG-TERM SUCCESS	4
II. WHEN THEY IGNORE PEER SEXUAL HARASSMENT, SCHOOLS COMPOUND THE HARM AND FOSTER SEX-BASED DISCRIMI- NATION IN VIOLATION OF TITLE IX	14
III. WHEN SCHOOLS TOLERATE, CONDONE, OR REFUSE TO REMEDY PEER SEXUAL HARASS- MENT, THEY TEACH STUDENTS THAT SEX- UAL HARASSMENT OF THEIR PEERS IS ACCEPTABLE, A LESSON THAT STUDENTS ARE APT TO TAKE WITH THEM INTO THE WORKING WORLD	20
CONCLUSION	26
APPENDIX	A-1

TABLE OF AUTHORITIES

Page

CASES

Andrews v. City of Philadelphia 895 F.2d 1469 (3d Cir. 1990).....	20
Bethel Sch. Dist. No. 403 v. Fraser 478 U.S. 675 [106 S. Ct. 315a, 92 L.Ed.2d 659] (1986).....	24
Brown v. Board of Educ. 347 U.S. 483 [74 S. Ct. 686, 98 L.Ed. 873] (1954).....	5, 14, 23, 25
Brzonkala v. Virginia Polytechnic Inst. 132 F.3d 949 (4th Cir. 1997) vacated and reh'g en banc granted, No. 96-1814 (Feb. 5, 1998).....	8
Burlington Indust., Inc. v. Ellerth ___ U.S. ___ [118 S. Ct. 2257, 141 L.Ed.2d 633] (1998).....	4
Burrow v. Postville Community Sch. Dist. 929 F. Supp. 1193 (N.D. Iowa 1996).....	8
Cannon v. University of Chicago 441 U.S. 677 [99 S. Ct. 1946, 60 L.Ed.2d 560] (1979).....	25
Clyde K. v. Puyallup Sch. Dist. No. 3 35 F.3d 1396 (9th Cir. 1994).....	5
Collier v. William Penn Sch. Dist. 956 F. Supp. 1209 (E.D. Pa. 1997).....	7
Davis v. Monroe County Bd. of Educ. 74 F.3d 1186 (11th Cir.), vacated, 91 F.3d 1418 (11th Cir. 1996), rev'd en banc, 120 F.3d 1390 (11th Cir. 1997).....	4
Davis v. Monroe County Bd. of Educ. 120 F.3d 1390 (11th Cir. 1997).....	6

TABLE OF AUTHORITIES - Continued

Page

Doe v. Petaluma City Sch. Dist. 830 F. Supp. 1560 (N.D. Cal. 1993), reconsid. granted, 949 F. Supp. 1415 (N.D. Cal. 1996).....	13
Doe v. Petaluma City Sch. Dist. 949 F. Supp. 1415 (N.D. Cal. 1996).....	24
Doe v. University of Illinois 138 F.3d 653 (7th Cir. 1998), petition for cert. filed, 67 U.S.L.W. 3126 (U.S. Aug. 18, 1998) (No. 98-126).....	21
EEOC v. Hacienda Hotel 881 F.2d 1504 (9th Cir. 1989).....	21
Faragher v. City of Boca Raton ___ U.S. ___ [118 S. Ct. 2275, 141 L.Ed.2d 662] (1998).....	4
Franklin v. Gwinnett County Pub. Sch. 503 U.S. 60 [112 S. Ct. 1028, 117 L.Ed.2d 1028] (1992).....	4
Gebser v. Lago Vista Indep. Sch. Dist. ___ U.S. ___ [118 S. Ct. 1989, 141 L.Ed.2d 277] (1998).....	1, 2, 4, 25
Hall v. Gus Constr. Co. 842 F.2d 1010 (8th Cir. 1988).....	21
Harris v. Forklift Sys. 510 U.S. 17 [114 S. Ct. 367, 126 L.Ed.2d 295] (1993).....	4, 20
Henson v. City of Dundee 682 F.2d 897 (11th Cir. 1982).....	21
Jenson v. Eveleth Taconite Co. 824 F. Supp. 847 (D. Minn. 1993).....	21

TABLE OF AUTHORITIES - Continued

Page

Meritor Sav. Bank, FSB v. Vinson 477 U.S. 57 [106 S. Ct. 2399, 91 L.Ed.2d 49] (1986)	4
Monteiro v. Tempe Union High Sch. Dist. No. 97-15511, 1998 U.S. App. LEXIS 26566 (9th Cir. Oct. 19, 1998)	5
Nicole M. v. Martinez Unified Sch. Dist. 964 F. Supp. 1369 (N.D. Cal. 1997)	7
Oncale v. Sundowner Offshore Servs., Inc. ___ U.S. ___ [118 S. Ct. 998, 140 L.Ed.2d 201] (1998)	2, 20
Patricia H. v. Berkeley Unified Sch. Dist. 830 F. Supp. 1288 (N.D. Cal. 1993)	5

STATUTES

Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 255 (codified as amended at 42 U.S.C.A. § 2000e-2(a)(1) (West 1994)	2
Title IX of the Education Amendments of 1972, 20 U.S.C.A. §§ 1681-1688 (West 1990 & Supp. 1998)	1

REGULATIONS

Department of Education, Office for Civil Rights, Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties, 62 Fed. Reg. 12,304 (1997)	9
--	---

TABLE OF AUTHORITIES - Continued

Page

MISCELLANEOUS

The American Assoc. of Univ. Women Educ. Found., <i>Hostile Hallways: The AAUW Survey On Sexual Harassment in America's Schools</i> (1993)	9, 10, 22
Susan Fineran & Larry Bennett, <i>Teenage Peer Sexual Harassment: Implications for Social Work Practice in Education</i> , 43 Social Work 55 (1998)	12, 13
Jean O'Gorman Hughes & Bernice Resnick Sandler, <i>Peer Harassment: Hassles for Women on Campus</i> (Center for Women Policy Studies 1988)	21, 24
Permanent Commission on the Status of Women et al., <i>In Our Own Backyard: Sexual Harassment in Connecticut's Public High Schools</i> (1995)	15, 21
Claire Robertson et al., <i>Campus Harassment: Sexual Harassment Policies and Procedures at Institutions of Higher Learning</i> , 13 Signs: Journal of Women and Culture in Society, 792 (1988)	12
Myra & David Sadker, <i>Failing at Fairness: How America's Schools Cheat Girls</i> (Scribner & Sons 1994)	13
Bernice Resnick Sandler, <i>Student-To-Student Sexual Harassment</i> , in <i>Sexual Harassment on Campus: A Guide for Administrators, Faculty and Stu- dents</i> (Bernice R. Sandler and Robert J. Shoop eds., 1997)	22, 23
Bernice R. Sandler & Robert J. Shoop, <i>What Is Sexual Harassment?</i> , in <i>Sexual Harassment on Campus: A Guide for Administrators, Faculty, and Students</i> (Bernice R. Sandler & Robert J. Shoop eds., 1997)	12

TABLE OF AUTHORITIES – Continued

Page

Nan Stein et al., <i>Secrets in Public: Sexual Harassment in Our Schools</i> (1993)	11, 12, 16, 17, 18
Nan Stein & Hamilton Fish Nat'l Inst. on School and Community Violence, <i>Incidence of Sexual Harassment and Sexual Violence in K-12 Schools</i> (forthcoming 1998)	7, 10, 15, 19
Mary Trigg & Kim Wittenstrom, 'That's The Way The World Really Goes': <i>Sexual Harassment and New Jersey Teenagers</i> ; 52 <i>Initiatives</i> 55 (1996).....	13
Jerry Useem, <i>Harvard Business School's "Woman Problem," Inc. Magazine</i> , June 1998, 35	23

INTEREST OF AMICI CURIAE

Amici curiae are organizations strongly committed to achieving equality for all people in education, regardless of sex. Each therefore has an abiding interest in ensuring the sound interpretation and application of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (Title IX), which prohibits discrimination and denial of educational benefits on the basis of sex. Descriptions of the individual organizations are set forth in the attached Appendix.

Amici have the consent of the parties to file this brief.¹ Letters of consent have been filed separately with the Court.

 SUMMARY OF ARGUMENT

Title IX prohibits the denial of educational benefits and discrimination under any federally funded education program or activity. This Court recognized last Term that sexual harassment of a student by a teacher causes "extraordinary harm" that "undermines the basic purposes of the educational system," and that when a school is deliberately indifferent to such harassment, it denies students equal educational benefits and engages in sex discrimination in violation of Title IX. *Gebser v. Lago Vista*

¹ This brief was authored by the *amici* and counsel listed on the front cover, and was not authored in whole or in part by counsel for a party. No one other than the *amici* or their counsel made any monetary contribution to the preparation or submission of this brief.

Indep. Sch. Dist., 118 S. Ct. 1989, 2000 (1998). This Court has also held that when employers fail to address known sexual harassment of peers in the workplace, they engage in sex discrimination in violation of Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 255 (codified as amended at 42 U.S.C. § 2000e-2(a)(1) (1994)). See *Oncale v. Sundowner Offshore Servs., Inc.*, 118 S. Ct. 998, 1000-01, 1003 (1998). This case now requires the Court to decide whether schools may be liable under Title IX for knowingly failing to address sexual harassment of one student by another.

Petitioner's brief explains that the laws of Congress and the Court's precedents require schools to address and remedy teacher and student harassment as forms of discrimination under Title IX and that, as with coworker harassment under Title VII, peer sexual harassment in schools can lead to liability under Title IX. This brief does not repeat those discussions. Rather, we show that, just as when sexual harassment of a student is committed by a teacher, a school's refusal to remedy peer sexual harassment constitutes a form of discrimination that causes "extraordinary harm" to the harassed student and "undermines the basic purposes of the educational system." *Gebser*, 118 S. Ct. at 2000.

Schools play a significant role in perpetuating the harm from peer sexual harassment. The harassment itself causes the student's education to suffer and causes serious emotional damage, as well as attendant physical problems. This harm is compounded when the school then ignores or refuses to remedy the harassment.

Further, by ignoring or otherwise failing to respond to peer sexual harassment, schools teach students that sexual harassment is acceptable behavior, and thereby "undermine[] [a] basic purpose[] of the educational system" (*id.*): preparing students for the adult workplace. Harassers who are not taught that sexual harassment is inappropriate are apt to continue their behavior throughout their school careers – creating hostile environments at middle schools, high schools, colleges, and graduate schools – and then to repeat it in the workplace. Accordingly, by failing to take reasonable steps to prevent discrimination in school and to educate students about the inappropriateness of sexual harassment, schools not only violate Title IX, they fall short of their broad educational mandate and ill-prepare their students for the realities of the work world.

STATEMENT OF THE CASE

Amici hereby adopt and incorporate by reference the Statement of the Case set forth in Petitioner's brief.

ARGUMENT

I. PEER SEXUAL HARASSMENT THAT CREATES A DISCRIMINATORY ENVIRONMENT HAS A DIRECT AND DEVASTATING IMPACT ON STUDENTS' EDUCATIONAL OPPORTUNITIES, EMOTIONAL DEVELOPMENT, AND LONG-TERM SUCCESS.

This Court has consistently recognized that sexual harassment, whether it occurs in the workplace or at school, causes serious discriminatory harm that often interferes substantially with the ability to work and learn, and that both workplaces and schools therefore must take reasonable steps to prevent its occurrence. See *Gebser v. Lago Vista Indep. Sch. Dist.*, 118 S. Ct. 1989 (1998); *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998); *Burlington Indus., Inc. v. Ellerth*, 118 S. Ct. 2257 (1998); *Harris v. Forklift Sys.*, 510 U.S. 17 (1993); *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1992); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986). The need to intervene is perhaps even more compelling when the harassment occurs at school rather than work. As the author of the Eleventh Circuit's panel opinion in this case noted: "The damage caused by sexual harassment . . . is arguably greater in the classroom than in the workplace, because the harassment has a greater and longer lasting impact on its young victims, and institutionalizes sexual harassment as accepted behavior." *Davis v. Monroe County Bd. of Educ.*, 74 F.3d 1186, 1193 (11th Cir.), *vacated*, 91 F.3d 1418 (11th Cir. 1996), *rev'd en banc*, 120 F.3d 1390 (11th Cir. 1997).

"Given the extremely harmful effects sexual harassment can have on young female students, public officials have an especially compelling duty not to tolerate it in

the classrooms and hallways of our schools." *Clyde K. v. Puyallup Sch. Dist. No. 3*, 35 F.3d 1396, 1401 (9th Cir. 1994). This is so because "[a] nondiscriminatory environment is essential to maximum intellectual growth and is therefore an integral part of the educational benefits that a student receives. A sexually abusive environment inhibits, if not prevents, the harassed student from developing her full intellectual potential and receiving the most from the academic program." *Patricia H. v. Berkeley Unified Sch. Dist.*, 830 F. Supp. 1288, 1293 (N.D. Cal. 1993) (quoting Ronna Greff Schneider, *Sexual Harassment and Higher Education*, 65 Tex. L. Rev. 525, 551 (1987)).

Likewise, this Court has long recognized the deleterious educational effects racial discrimination exacts on students. See *Brown v. Board of Educ.*, 347 U.S. 483, 493-95 (1954). Other courts have made similar observations. See, e.g., *Monteiro v. Tempe Union High Sch. Dist.*, No. 97-15511, 1998 U.S. App. LEXIS 26566, at *37 (9th Cir. Oct. 19, 1998) ("It does not take an educational psychologist to conclude that being referred to by one's peers by the most noxious racial epithet in the contemporary American lexicon ["nigger"], being shamed and humiliated on the basis of one's race, and having the school authorities ignore or reject one's complaints would adversely affect a Black child's ability to obtain the same benefit from schooling as her white counterparts."). Discrimination in the form of sexual harassment (whether by a teacher or a fellow student) harms educational opportunities in ways similar to racial discrimination.

This case vividly demonstrates how peer sexual harassment harms students' education. In the classrooms and hallways of their elementary school, LaShonda D.'s

fifth-grade classmate G.F. repeatedly attempted to touch her breasts and vaginal area and made statements such as "I want to get in bed with you" and "I want to feel your boobs." (Pet. App. at 95a.) G.F. rubbed his body against LaShonda's in the hallway and simulated having sex with her during class. (*Id.* at 96a.) The school required LaShonda to sit next to G.F. in class for over three months after she first complained of this harassment. (*Id.* at 97a.) Both her and her mother's repeated complaints to school officials were ignored or even dismissed. (*Id.* at 96a-98a.) As a result of the harassment and the school's refusal to act, LaShonda could not concentrate on her school work, her attendance and participation in school activities decreased, her emotional health deteriorated, and her grades – previously all A's and B's – dropped. (*Id.* at 97a, 100a); *Davis v. Monroe County*, 120 F.3d 1390, 1394 (11th Cir. 1997); *id.* at 1418 (Barkett, J., dissenting).

LaShonda's experience is not unique among school-children. The reported cases reflect a variety of educational and emotional harm stemming from peer harassment. According to one expert:

Among the consequences of sexual harassment that have been [revealed] through lawsuits are: absenteeism; dropping out of a particular class/ or school; lower grades; sleeplessness and physical symptoms/complaints; fear of separation from adults, be they parents or school personnel (i.e., refusal to take the school bus; refusal to participate in recess; asking to stay in the classroom or be sent to the principal's or nurse's office during recess; refusal to eat lunch in the cafeteria and choosing to stay in the classroom or library during lunch); depression; weight

loss/gain; and threats to commit suicide. Students also expressed a reduction of trust towards adults and in their beliefs that school is a safe and fair environment; they felt betrayed, trivialized, and dismissed if and when they told school personnel about the incidents of sexual harassment that they had experienced.

Nan Stein, Hamilton Fish Nat'l Inst. On School and Community Violence, *Incidence of Sexual Harassment and Sexual Violence in K-12 Schools* (forthcoming 1998) (manuscript at 37-38, on file with authors) (adapted from *Between the Lines: Sexual Harassment in K-12 Schools* (Teacher's College Press 1998)) [hereinafter *Incidence of Sexual Harassment*].

Many cases graphically illustrate the types of sexually hostile environments created at the hands of other students:

- From the seventh through ninth grades, Kellie Collier's ability to learn was inhibited by peer sexual harassment including a male student exposing his penis to Kellie, grabbing her breast, and using offensive language, sexual innuendo, sexual propositions, and threats of physical harm. *Collier v. William Penn Sch. Dist.*, 956 F. Supp. 1209, 1211-12 (E.D. Pa. 1997).
- Nicole M., a junior high school student, transferred to a different school as a result of peer sexual harassment consisting of a male student touching Nicole's breast during class and making repeated unwanted verbal comments regarding her breast and figure in general. *Nicole M. v. Martinez Unified Sch. Dist.*, 964 F. Supp. 1369, 1372 (N.D. Cal. 1997).

- Lisa Burrow, a high school student, avoided school and ultimately was forced to graduate early as the result of peer sexual harassment that included a male student repeatedly kicking her between the legs, students yelling obscenities at her, and threats being made to her life. *Burrow v. Postville Community Sch. Dist.*, 929 F. Supp. 1193, 1196-97, 1205-06 (N.D. Iowa 1996).
- A college student was gang raped by other students. As a result, her "behavior changed radically. She became depressed and avoided contact with her classmates and residents of her dormitory. . . . She ceased attending classes and eventually attempted suicide. . . . She later sought and received a retroactive withdrawal from [her college] for the . . . academic year because of the trauma." *Brzonkala v. Virginia Polytechnic Inst.*, 132 F.3d 949, 953 (4th Cir. 1997), *vacated and reh'g en banc granted*, No. 96-1814 (Feb. 5, 1998).

The Office for Civil Rights (OCR) of the Department of Education, the agency charged with enforcing compliance with Title IX, also recognizes the grave harm to students' educations that results from peer sexual harassment and treats it just like other forms of sexual harassment that violate Title IX:

Through its enforcement of Title IX, OCR has learned that a significant number of students, both male and female, have experienced sexual harassment, that sexual harassment can interfere with a student's academic performance and emotional and physical well-being, and that preventing and remedying sexual harassment in

schools is essential to ensure nondiscriminatory, safe environments in which students can learn.

Department of Education, Office for Civil Rights, Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties, 62 Fed. Reg. 12,034, 12,304 (1997). In particular, OCR reports that students who have been sexually harassed may experience "difficulty concentrating on academic work, symptoms of depression, and a desire to avoid certain individuals and places at school." *Id.* at 12,041. "[Their] grades may go down or the student may be forced to withdraw from school because of the harassing behavior." *See id.* at 12,041 & 12,049 nn.48, 51 (citing cases reported to OCR in which a girl's grades dropped while harassment was occurring, students left school due to harassment, and several girls were afraid to go to school because of harassment).

Numerous studies further document the direct correlation between peer harassment and decreased educational achievement, as well as harm to students' emotional development. The landmark 1993 nationwide peer harassment study commissioned by the American Association of University Women Educational Foundation (AAUW), for example, found that more than one in five students who had been sexually harassed by their fellow students wanted to avoid school, stayed home or cut classes, did not want to talk as much in class, and found it harder to pay attention in school after experiencing harassment. The American Assoc. of Univ. Women Educ. Found., *Hostile Hallways: The AAUW Survey On*

Sexual Harassment in America's Schools 15-16 (1993) [hereinafter *Hostile Hallways*]; *Incidence of Sexual Harassment*, *supra* at 37-38.

The responses of individual students to this and other peer harassment surveys poignantly demonstrate the emotional turmoil and adverse educational impact that occur when students harass their fellow students:

"It made me feel cheap, like I was doing something I wasn't aware of to draw this kind of attention to myself. I could never stand up to him because [if] I told him to stop he'd threaten me, so I began to act like it didn't bother me(.) . . . He'd hit me (hard enough to bruise me twice) and then pin my arms behind my back till it hurt and push [me] against a wall and tell me all the awful things he would do to me if I ever hit him again, so I quit standing up to him again." [14-year-old girl from small town in Michigan.]

Incidence of Sexual Harassment, *supra* at 11.

"At first I didn't really think of it because it was considered a 'guy thing', but as the year went on, I started to regret going to school, especially my locker, because I knew if I went I was going to be cornered and be touched, or had [sic] some comment blurted out at me. I just felt really out of place and defenseless and there was nothing I could do." [14-year-old girl from Maryland.]

Id.

"My harassment came from one boy every day. Constantly. He was really into smacking my bottom, among other things and always asking me

to go to bed with him. There were tons of other guys, too. My freshman year was the worst and my sophomore year wasn't much better - there were two guys that were always bothering me the most at different times. I didn't want to go to school and I held resentment towards those who did that to me. I always told them to stop and even sometimes hit them. . . ." [14-year-old girl from Illinois.]

Nan Stein et al., *Secrets in Public: Sexual Harassment in Our Schools*, sec. (Who are the Harassers and Where Does the Harassment Happen?) (1993) [hereinafter *Secrets in Public*].

"Being sexually harassed at school made me feel upset, angry and violated. I mean, I shouldn't have to take this crap at school, should I? It's my right to go to school and not be harassed, isn't it? I feel confused because I wonder if all guys think those things about me! I feel insecure after this happens. I hate it. I shouldn't have to feel sexually intimidated by people who barely know me." [15-year-old girl from Vermont.]

Id., sec. (How Do Girls and Young Women React?).

"There was this one particular day when the harassment was at an unusual high. I kept cool until the end of class. At the end of class I ran into the bathroom and locked the stall door. I started crying hysterically. One of my friends happened to see me and came in. She persuaded me to come out and go to class and the office. The boy was suspended and switched from the class. Although it was over and all I still felt withdrawn from that class. I think that if it would have went [sic] on any longer I would

have failed the class." [14-year-old girl from Michigan.]

Id., sec. (How Do Schools Respond?).

Social scientists have similarly concluded that peer harassment causes extensive educational and emotional harm. Bernice R. Sandler and Robert J. Shoop, leading researchers on the subject, found that sexual harassment can seriously affect students' learning by causing "[f]eelings of helplessness, lack of control, shame, guilt, depression, anxiety, inability to concentrate, and difficulty in handling day-to-day tasks at . . . school. . . ." Bernice R. Sandler & Robert J. Shoop, *What is Sexual Harassment?*, in *Sexual Harassment on Campus: A Guide for Administrators, Faculty, and Students* 16 (Bernice R. Sandler & Robert J. Shoop eds., 1997). Likewise, the Indiana University Office of Women's Affairs concluded that sexual harassment "often disrupt[s] the educational process altogether; the affected student may drop a class or leave school. When students attempt to ignore or endure such a pattern of harassment, their academic performance, motivation, and sense of emotional well-being often suffer." Claire Robertson et al., *Campus Harassment: Sexual Harassment Policies and Procedures at Institutions of Higher Learning*, 13 *Signs: Journal of Women and Culture in Society* 792, 807 (1988); see also Susan Fineran & Larry Bennett, *Teenage Peer Sexual Harassment: Implications for Social Work Practice in Education*, 43 *Social Work* 55, 55 (1998) [hereinafter *Teenage Peer Sexual Harassment*] ("Many students report school performance difficulties as a result of sexual harassment, including absenteeism, decreased quality of schoolwork, skipping or dropping classes, lower grades, loss of friends, tardiness, and truancy.").

The harm caused by peer sexual harassment can last long after the students leave school. For example, lower grades resulting from inability to concentrate and perform in school can "lead to ineligibility for specific colleges or merit scholarships and loss of recommendations for awards, colleges, or jobs." *Teenage Peer Sexual Harassment*, *supra* at 55. Some students are forced out of school entirely by peer harassment. See *Doe v. Petaluma City Sch. Dist.*, 830 F. Supp. 1560, 1564-66, 1575 (N.D. Cal. 1993) ("Surely one is 'denied the benefits of, or subjected to discrimination under' an education program on the basis of sex when, as alleged here, she is driven to quit an education program because of the severity of the sexual harassment she is forced to endure in the program."), *reconsid. granted*, 949 F. Supp. 1415 (N.D. Cal. 1996); see also Myra & David Sadker, *Failing at Fairness: How America's Schools Cheat Girls* 115 (Scribner & Sons 1994) ("Girls exhibit the same symptoms as women who are persecuted by sexual harassment: They become withdrawn and fearful, feel intimidated, and may display the physical symptoms of illness. They often transfer out of courses or programs and sometimes drop out of school altogether."). As one researcher found, "[a]ll of these factors lead to fewer career choices and decreased or lost economic opportunities and possible job failure that can affect a student for the rest of her or his life." *Teenage Peer Sexual Harassment*, *supra* at 55; see also Mary Trigg & Kim Wittenstrom, *'That's The Way The World Really Goes': Sexual Harassment and New Jersey Teenagers*, 52 *Initiatives* 55, 63 (1996) (sexual harassment among teenage students "can . . . influence young peoples' abilities to learn, achieve, and excel"). In sum, peer sexual harassment –

like racial discrimination – “generates a feeling of inferiority as to [students’] status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Brown v. Board of Educ.*, 347 U.S. at 494.

II. WHEN THEY IGNORE PEER SEXUAL HARASSMENT, SCHOOLS COMPOUND THE HARM AND FOSTER SEX-BASED DISCRIMINATION IN VIOLATION OF TITLE IX.

LaShonda D. alleges not only that she was persistently and severely harassed by another student, but that she and her mother consistently sought help from school officials to end the harassment and that their pleas were regularly ignored or even denigrated. It is that failure to intervene that is the basis for liability here. A school’s failure to respond to peer sexual harassment, as occurred here, officially sanctions the discrimination and further isolates and demeans the student, in this case a vulnerable fifth-grader.

LaShonda’s complaint exemplifies the ways a school compounds the discriminatory harm of peer sexual harassment by tolerating or condoning it. Despite repeated protests to a number of different school officials, the harassing student was not “suspended, kept away from LaShonda, or disciplined in any way. . . .” (Pet. App. at 97a.) LaShonda asked several times for the simple remedy of having her seat in one class moved so that she did not have to sit next to her harasser, but her requests were rejected until after she had complained for three months. (*Id.*) When LaShonda and her mother spoke with the principal after five months of harassment, his

response was to ask LaShonda why she was the only student complaining about G.F.’s behavior. (*Id.* at 96a-97a.)

Unfortunately, the school district’s response to LaShonda’s plight is not unique. Studies indicate school officials often ignore or refuse to respond to complaints of sexual harassment or, worse yet, directly fault *the victim*.² According to one scholar, “[s]tudents recognize that adults often witness episodes of sexual harassment, and expect adults to see and feel these violations as they do. Yet, many students (particularly the girls) cannot get confirmation of their experiences from school personnel because most of those adults do not name it ‘sexual harassment’ and do nothing to stop it.” *Incidence of Sexual Harassment, supra* at 35. A well-regarded Connecticut state agency survey found that 85 percent of school personnel who monitor Title IX compliance agree that “[s]tudent-to-student sexual harassment often goes unrecognized because it is too often dismissed as normal adolescent behavior.” Permanent Commission on the Status of Women et al., *In Our Own Backyard: Sexual Harassment in Connecticut’s Public High Schools* 21 n.7, 31 (1995) [hereinafter *In Our Own Backyard*].

Research also reflects that when schools respond to peer sexual harassment with indifference or ridicule, they “teach[] young women to suffer harassment and abuse privately. They learn that speaking up will not result in their being heard or believed and that if they insist on

² Studies also have concluded that fabricated sexual harassment complaints are rare. See *Incidence of Sexual Harassment, supra* at 30.

pursuing matters, they will be on their own." *Secrets in Public, supra* at 15. They "feel very alone and abandoned." *Id.* "Insult is thus added to injury because adults will neither confirm that sexual harassment is taking place nor intervene to stop it." *Id.*

Evidence of school-inflicted harm is most poignantly described by young harassment victims themselves:

"I was in summer school on the last day, I was wearing a silk black tank top and jeans (very baggy). Three guys cornered me and said, 'You know if we raped you right now we could get away with it because you're dressed like a slut.' That alone made me feel so ashamed and embarrassed because I thought I looked nice, to have someone say you look like a slut just crushes your feelings. As if that weren't enough when I yelled out to my teacher she said, 'You know you ask for it - you get what you deserve,' and she wouldn't help me. She always, in my opinion, favored the guys. I talked to two other girls in the class and similar things happened to them, and our teacher seemed to think it was our fault." [17-year-old, Maryland.]

Id., sec. (Whom Did They Tell?).

"I have told teachers about this a number of times; each time nothing was done about it. Teachers would act as if I had done something to cause it. Once I told a guidance counselor, but was made to feel like a whore when she asked questions like 'Do you like it?' and 'They must be doing it for a reason. What did you do to make them do it?' " [13-year-old, Pennsylvania.]

Id.

"One thing I learned was how unfair the world can be. I took a photography class and the majority of the class was boys. . . . I was in the darkroom developing pictures and they would come in and corner me. They would touch me, put their hands on my thighs and slide their hands up my skirt. They often tried to put my hand down their pants. . . . One day I was in the room alone and one of the boys came in. When I went to leave he grabbed me and threw me down and grabbed my breast. I felt I was helpless, but I punched him and he ran out. The teacher (who was a man) came in and yelled at me. When I tried to explain why I had hit him the teacher told me I deserved it because I wore short skirts. I was sent to the principal and I had to serve detention. I didn't tell the principal because I feared he would do the same and tell me it was my fault. I felt so alone." [15-year-old, New Jersey.]

Id.

"I feel that school administration needs to view this as a serious problem. In my particular case, I was receiving comments pertaining to sexual parts of my body, and being asked to respond to sexually explicit jokes. This went on for over 6 months. I was fed up. After reporting this *three* times to the school administration, I was told that these boys were 'flirting' and had a 'crush' on me. I was disgusted with the actions of the administration. They told me they would give the boys a strict warning. I saw them do it. I don't think asking someone to stop harassing another person is a strict warning. The worst part of the whole thing is that they gave them the same 'warning' on three different occasions.

The harassing never stopped and I was humiliated; I'm scared. If you can't feel comfortable at school, how can you get a good education? Something has got to change." [14-year-old, Illinois.]

Id.

"In my case there were 2 or 3 boys touching me, and trust me they were big boys. And I'd tell them to stop but they wouldn't! This went on for about 6 months. Finally I was in one of my classes when all of them came back and backed me into a corner and started touching me all over. So I went running out of the room and the teacher yelled at me and I had to stay in my seat for the rest of the class. But after the class I told the principal, and him and the boys had a little talk. And after the talk was up, the boys came out laughing cause they got no punishment." [12-year-old, Michigan.]

Id.

"I'd like to see the school and the administration take a much stronger approach to stopping this problem. Teachers are around when the boys do these things but they just chalk it up to boys being boys, with little feeling to how it's making the females feel." [17-year-old, Massachusetts.]

Id., sec. (What Do Students Think Schools Should Do?).

"I think schools need to pay more attention to what's going on around them because girls like me are just dying inside because no one will believe us." [14-year-old, Florida.]

Id.

When schools consistently ignore or refuse to remedy ongoing sexual harassment of students by their peers, they foster a discriminatory environment, and send a message to the victims that such harassment is normal. As one young survey respondent put it:

"Of the times I was sexually harassed at school, one of them made me feel really bad. I was in class and the teacher was looking right at me when this guy grabbed my butt. The teacher saw it happen. I slapped the guy and told him not to do that. My teacher didn't say anything and looked away and went on with the lesson like nothing out of the ordinary had happened. It really confused me because I knew guys weren't supposed to do that, but the teacher didn't do anything. I felt like the teacher (who was a man) betrayed me and thought I was making a big deal out of nothing. But most of all, I felt really bad about myself because it made me feel slutty and cheap. It made me feel mad too because we shouldn't have to put up with that stuff, but no one will do anything to stop it. Now sexual harassment doesn't bother me as much because it happens so much it almost seems normal. I know that sounds awful, but the longer it goes on without anyone doing anything, the more I think of it as just one of those things that I have to put up with." [14-year-old girl from a large city in Washington state.]

Incidence of Sexual Harassment, supra at 10.

According to the Eleventh Circuit's opinion in the present case, however, all the foregoing conduct by school officials would fall outside Title IX's mandate to eliminate all forms of sex discrimination, for the sole

reason that the harasser was a student and not a teacher. Such categorical exclusion of one type of discrimination from Title IX cannot be squared with the statute's plain language or our national commitment to eliminating sex discrimination.

III. WHEN SCHOOLS TOLERATE, CONDONE, OR REFUSE TO REMEDY PEER SEXUAL HARASSMENT, THEY TEACH STUDENTS THAT SEXUAL HARASSMENT IS ACCEPTABLE, A LESSON THAT STUDENTS ARE APT TO TAKE WITH THEM INTO THE WORKING WORLD.

Left unchecked, the same harassing behavior perpetrated in elementary and high school can continue in the higher education context, and may ultimately resurface in the workplace. Students who learn it is acceptable to harass their peers in school will be ill-prepared for the working world. It is well-established that employers' failure to take reasonable steps to prevent co-worker harassment results in Title VII liability. See *Oncale v. Sundowner Offshore Servs., Inc.*, 118 S. Ct. 998, 1000-01, 1003 (1998). As this Court has recognized, "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated." *Harris*, 510 U.S. at 21 (citations and internal quotation marks omitted). Title VII has been found to have been violated, for example, where, in a situation analogous to this one, a colleague engages in lewd, sexually explicit commentary and assaults his female peers and the employer fails to respond. See, e.g., *Andrews v. City of Philadelphia*, 895 F.2d

1469, 1482-86 (3d Cir. 1990); *EEOC v. Hacienda Hotel*, 881 F.2d 1504, 1514-15 (9th Cir. 1989); *Hall v. Gus Constr. Co.*, 842 F.2d 1010, 1013-15 (8th Cir. 1988); *Henson v. City of Dundee*, 682 F.2d 897, 901-05 (11th Cir. 1982); *Jenson v. Eveleth Taconite Co.*, 824 F. Supp. 847, 885 (D. Minn. 1993).

The school's failure to respond to G.F.'s continual harassment of LaShonda in this case, which interfered with her ability to concentrate, resulted in her grades dropping, and even compelled her to compose a suicide note (see Pet. App. at 97a), would have unquestionably constituted actionable harassment had it occurred in a workplace setting. Just as sexually harassing conduct that is sufficiently severe or pervasive can create a hostile work environment under Title VII, it can cultivate a hostile learning environment under Title IX. See *Doe v. University of Illinois*, 138 F.3d 653, 678 (7th Cir. 1998) (Easterbrook, J., concurring) ("[F]ailure to protect pupils from private aggression is a species of discrimination. This is the original meaning of equal protection of the laws."), *petition for cert. filed*, 67 U.S.L.W. 3126 (U.S. Aug. 18, 1998) (No. 98-126).

As this case demonstrates, peer harassment often begins long before students arrive at college or enter the workforce: it occurs as early as elementary school. See Jean O'Gorman Hughes & Bernice Resnick Sandler, *Peer Harassment: Hassles for Women on Campus* 7 (Center for Women Policy Studies 1988) [hereinafter *Peer Harassment*]. As Connecticut's Permanent Commission on the Status of Women concluded, "[a]s long as sexual harassment is treated casually – or ignored – in schools, the underlying message students receive is that harassment is approved or tacitly condoned." *In Our Own Backyard*, *supra* at 32. Since peer harassment in schools frequently

occurs in public classrooms and hallways where peers and school officials are likely to witness it (see *Hostile Hallways*, *supra* at 12-13 (66% of harassed students were harassed by peers in the hallways of their schools; 55% were harassed by their peers in classrooms)), student bystanders are apt to learn this as well. "When these behaviors occur again and again, and when they are unnoticed or condoned by peers and even some [school] officials, [boys] and [girls] alike receive the message that women can be treated with disdain, a lack of respect, and that [it] does not matter to anyone." Bernice Resnick Sandler, *Student-To-Student Sexual Harassment*, in *Sexual Harassment on Campus: A Guide for Administrators, Faculty and Students* 51 (Bernice R. Sandler & Robert J. Shoop eds., 1997) [hereinafter *Student-To-Student Sexual Harassment*].

Having learned that sexual harassment of their peers is acceptable, students are likely to carry this message with them from one phase of their lives to the next. According to the AAUW nationwide study of peer harassment in high schools, *Hostile Hallways*, 41% of high school boys who harassed their classmates reported engaging in harassment because "[i]t's just a part of school life/a lot of people do it/it's no big deal." *Hostile Hallways*, *supra* at 12. One fourteen-year-old male noted: "People do this stuff [sexual harassment] every day. No one feels insulted by it. That's stupid. We just play around. I think sexual harassment is normal." *Id.* at 24 (emphasis added). What is learned as "normal" behavior in high school is apt to be repeated in college. Echoing the high school student's views above, for example, a group of male college students called into the Dean's

office for cornering a female student and grabbing her genitals responded: "'but everybody does this in high school.'" *Student-To-Student Sexual Harassment*, *supra* at 51.

The lesson that sexual harassment is permitted can extend into the professional training environment as well. Earlier this year, for example, six members of the Harvard Business School graduating class (average age: 27; average years of prior work experience: 4) were disciplined for harassing their first-year female classmates by, among other things, passing lewd, sexually explicit notes to them during class, in which they proposed things like the following: "'You look delicious presenting your shareholder argument. Come over here so I can lick you!'" Jerry Useem, *Harvard Business School's "Woman Problem," Inc. Magazine*, June 1998, at 33. The graduate students' comments vary little from those made by elementary school student G.F. to his classmate LaShonda in this case: "I want to get in bed with you" and "I want to feel your boobs." (See Pet. App. at 95a.) As these two scenarios from vastly different educational levels demonstrate, "[w]hen men harass women with impunity, they are learning that women are fair game and that such harassment is acceptable behavior." *Student-To-Student Sexual Harassment*, *supra* at 57. Moreover, men who harass in college are likely to continue the behavior in the workplace where it is less likely to be tolerated and can be a cause for dismissal and/or a lawsuit. See *id.*

As this Court recognized over forty years ago, "education is perhaps the most important function of state and local governments" in our modern society. *Brown v. Board of Educ.*, 347 U.S. at 493. "[R]equired in the performance

of our most basic public responsibilities" and integral to the operation of "our democratic society," education "is the very foundation of good citizenship. . . . [I]t is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." *Id.*; see also *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986) ("The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order.").³ Given "the unique mission and setting of an educational institution," schools have a duty to take appropriate action to prevent peer harassment:

"In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students."

Doe v. Petaluma City Sch. Dist., 949 F. Supp. 1415, 1427 (N.D. Cal. 1996) (quoting Department of Education, Racial Incidents and Harassment Against Students at

³ Formal education thus provides "more than an intellectual experience; it has an important social component. . . . At best, [schools] can provide the opportunity to further the social growth of students, with [students] learning how to get along with peers and how to handle differences of race, ethnicity and gender. This 'social learning' has been labeled 'co-curricular,' indicating that it is equal in value to the intellectual learning that takes place on campus." *Peer Harassment*, *supra* at 1.

Educational Institutions, Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (1994)).

By failing to teach G.F. and students like him that discriminatory behavior such as sexual harassment is unacceptable, educational institutions like the Respondent abandon a principal component of their educational mission: "preparing [students] for later professional training, and . . . helping [them] to adjust normally to [their] environment." *Brown v. Board of Educ.*, 347 U.S. at 493. By failing to respond to students' complaints about another student's harassing conduct, schools refuse to protect students from discriminatory practices as required by Title IX. See *Gebser*, 118 S. Ct. at 1997; *Cannon v. University of Chicago*, 441 U.S. 677, 703-04 (1979).

CONCLUSION

For the foregoing reasons, *amici* urge that the decision of the Eleventh Circuit Court of Appeals be reversed.

Respectfully Submitted,

HORVITZ & LEVY LLP

DAVID S. ETTINGER

LISA R. JASKOL

MARY-CHRISTINE SUNGAILA*

* *Counsel of Record*

15760 Ventura Boulevard, 18th Floor
Encino, California 91436-3000
(818) 995-0800

**NOW LEGAL DEFENSE AND
EDUCATION FUND**

MARTHA F. DAVIS

JULIE GOLDSCHIED

YOLANDA S. WU

99 Hudson Street, 12th Floor
New York, New York 10013-2871
(212) 925-6635

November, 1998

Counsel for Amici Curiae

APPENDIX

APPENDIX

STATEMENTS OF INTEREST OF *AMICI CURIAE*

NOW Legal Defense and Education Fund

NOW Legal Defense and Education Fund (NOW LDEF) is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1970 by leaders of the National Organization for Women. A major goal of NOW LDEF is eliminating barriers that deny women and girls equal opportunity, such as sexual harassment. For years, NOW LDEF has fought for educational equity for girls. In April 1993, NOW LDEF and the Wellesley College Center for Research on Women released the results of a survey on sexual harassment in schools that they conducted through *Seventeen* magazine. NOW LDEF was co-counsel in *Doe v. Petaluma City Sch. Dist.*, 830 F. Supp. 1560 (N.D. Cal. 1993), *reconsid. granted*, 949 F. Supp. 1415 (N.D. Cal. 1996), the first case in which a court recognized that schools' failures to respond to peer sexual harassment may violate Title IX. NOW LDEF has appeared as *amicus* in numerous cases concerning girls' rights to be free from sexual harassment and sex discrimination in the schools, including *Gebser v. Lago Vista Indep. Sch. Dist.*, 118 S. Ct. 1989 (1998) and *Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60 (1992), and many appellate court decisions concerning schools' liability under Title IX for sexual harassment of students.

American Association of University Women

For well over a century, the American Association of University Women (AAUW), an organization of 150,000 members, has been a catalyst for the advancement of women and their transformations of American society. In more than 1,500 communities across the country, AAUW members work to promote education and equity for all women and girls. AAUW plays a major role in activating advocates nationwide on AAUW's priority issues. Current priorities include gender equity in education, reproductive choice, and workplace and civil rights issues. AAUW believes that Title IX is essential for continuing the advancement of women and girls in education.

American Jewish Congress Commission for Women's Equality

The American Jewish Congress Commission for Women's Equality is an activist leadership group of Jewish women which seeks to pursue equal rights for women within a Jewish context. As an arm of the American Jewish Congress, it has filed numerous briefs in the Supreme Court concerning abortion and reproductive rights and sexual discrimination and harassment. It believes that women, particularly young women in a school setting, cannot reach their full potential if they are sexually harassed by their fellow students. It further believes that Title IX of the Education Amendments of 1972 requires school authorities to protect students against peer harassment.

California Women's Law Center

The California Women's Law Center (CWLC) is a private, nonprofit public interest law center specializing in the civil rights of women and girls. The CWLC was established in 1989 to address the comprehensive civil rights of women and girls in the following priority areas: sex discrimination, including sex discrimination in education, women's health and reproductive rights, family law, violence against women and child care. Since its inception, the CWLC has placed a strong emphasis on advancing the rights of women and girls in education, particularly the issues of discrimination because of sexual harassment. The issues raised in this case will have an enormous impact on the rights of girls to receive an education free of the terrible consequences of harassment.

Center for Advancement of Public Policy

Center for Advancement of Public Policy is a non-partisan, non-profit organization founded in 1991. Its mission includes national outreach on issues of importance to women and girls, including education and sexual harassment. The Center is a member of the National Coalition for Women and Girls in Education. The Center's research program includes sponsored research in educational equity for girls, with emphasis on girls of color and those with disabilities.

Center for Women Policy Studies

The Center for Women Policy Studies is a national nonprofit, multiethnic and multicultural feminist policy

research and advocacy institution. The Center has been a leader in research, policy analysis and advocacy on violence against women since its founding in 1972. In 1993, the Center began an examination of girls' experiences with violence. To bring the voices of girls and teenage women into the public policy debate about youth violence, the Center conducted focus group research and a national survey of readers of two girl-focused magazines. Based on its research, the Center believes that girls who have been sexually harassed and/or abused are more likely to perceive violence as acceptable behavior. Thus, the Center advocates for programs that immediately intervene when girls are victimized to not only stop the abuse but also to connect girls to services that will help them cope appropriately and positively to the victimization.

Connecticut Women's Education and Legal Fund, Inc.

The Connecticut Women's Education and Legal Fund, Inc. (CWEALF), is a non-profit women's rights organization. Incorporated in 1973, CWEALF has over 1,400 members. The mission of the organization is to work through legal and public policy strategies and community education to end sex discrimination in the state's education, judicial, social service, and employment systems. For nearly 25 years, CWEALF has been a leader in Connecticut in working on the issue of sexual harassment. CWEALF provides legal information and referrals to women on a daily basis who face sexual harassment in the workplace; it conducts trainings on sexual harassment prevention to managers and workers, students and

teachers; and it writes *amicus curiae* briefs and provides technical assistance to policy makers in order to improve laws dealing with sexual harassment.

Equal Rights Advocates

Equal Rights Advocates (ERA) is a San Francisco-based human and civil rights organization dedicated to achieving equality for women and girls. Begun in 1974 as a teaching law firm specializing in issues of sex-based discrimination, ERA has evolved into a legal organization with a multifaceted approach to addressing women's issues. ERA has represented plaintiffs in numerous sexual harassment cases, including the first case in the Ninth Circuit to find sexual harassment a violation of Title VII. *Miller v. Bank of America*, 600 F.2d 211 (9th Cir. 1979). In addition, ERA sponsors public policy initiatives, counsels hundreds of individual women each year on their legal right to be free from sexual harassment, and conducts sexual harassment workshops for schools and non-profit organizations. It was co-counsel in *Doe v. Petaluma City Sch. Dist.*, 830 F. Supp. 1560 (N.D. Cal. 1993), *reconsidered*, 949 F. Supp. 1415 (N.D. Cal. 1996), the first case to recognize a cause of action for peer sexual harassment under Title IX.

Feminist Majority Foundation

The Feminist Majority Foundation (Foundation) is a non-profit organization with offices in Arlington, Virginia and Los Angeles, California. The Foundation is dedicated to eliminating sex discrimination, promoting equality and women's rights, and ending violence against women.

Among its equality projects, the Foundation publishes reports and leads programs in the areas of Empowering Women in Business, Medicine, Philanthropy, and Sports. The Foundation runs a sexual harassment hotline and features a "911 for Women" section on its internet site to provide direct information to women and girls on sexual harassment, sexual assault, and domestic violence. Its Feminist Majority Leadership Alliances project is devoted to training young women and girls to assume leadership roles and eliminating sex discrimination.

Lambda Legal Defense and Education Fund

Lambda Legal Defense and Education Fund (Lambda) is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men and people with HIV/AIDS, through impact litigation, education and public policy work. Founded in 1973, Lambda is the oldest and largest legal organization dedicated to those goals. Lambda is interested in the issues raised by this case because lesbian, gay, and HIV-infected students have themselves been the targets of peer harassment in public schools, and many of those instances of harassment have involved sex discrimination. Lambda, for example, was counsel in *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996), a successful challenge on behalf of a young gay student to a denial of equal protection (based on the student's sex and sexual orientation) in the school's response to peer harassment. Such enforcement of the Constitution is an integral component of the broad-based effort of many groups to ensure safe schools for all

students. Title IX's statutory protection against sex discrimination is another integral part of that same effort and should be given full effect here.

Ms. Foundation for Women

The Ms. Foundation for Women, the country's only national, multi-issue women's fund, has been developing opportunities for women for more than 25 years. Creator of the award-winning *Take Our Daughters To Work® Day*, the Ms. Foundation is dedicated to improving the lives of women and girls in the areas of Economic Security, Health and Safety, & Girls, Young Women and Leadership. With headquarters in New York, the Ms. Foundation makes grants, conducts advocacy and public-education campaigns, and provides training and technical assistance to non-profit organizations throughout the United States. The Ms. Foundation is dedicated to ensuring the girls are permitted to reach their full potential in a positive, safe environment. School-based sexual harassment is completely anathema to this goal.

Myra Sadker Advocates for Gender Equity

Founded in 1995 as an ongoing legacy to Myra Sadker's pioneering work in gender equity, Myra Sadker Advocates promote gender equity in and beyond schools. By working to eliminate gender bias, the Advocates enhance the academic, psychological, economic and physical potential of America's children. Almost 1,000 national advocates enhance the lives of thousands more as they address equity issues in research that explores the social and institutional dynamics of sexism, training that

promotes non-biased and effective treatment of girls and boys, and outreach that supports a wide spectrum of work in gender equity beyond schools. Research studies show that the primary step in creating effective schools is the establishment of a safe school climate. Indeed, student safety is a necessary prerequisite for learning. Without this fundamental right, education itself is endangered. Myra Sadker Advocates join this brief to recognize peer sexual harassment as a cause of action under Title IX, thus insuring that school districts create safe and productive learning climates.

National Alliance of Sexual Assault Coalitions

Organized in September of 1995, the National Alliance of Sexual Assault Coalitions (NASAC) is a national organization focusing on public policy and public education to end sexual violence. NASAC has developed a comprehensive grassroots communications network of state coalitions from across the United States who have extensive state public policy experience. As such, NASAC effectively advocates for the needs, rights and concerns of victims of sexual assault.

National Association for Girls and Women in Sport

For almost 100 years, the National Association for Girls and Women in Sport (NAGWS) has promoted equal opportunities for girls and women in education and athletics. NAGWS champions equal opportunities, high quality and respect for girls' and women's sport programs. NAGWS is a not-for-profit, educational organization whose 5,000 members are professional educators:

administrators, teachers, and coaches at all levels of education. Its national membership is concerned with *Davis v. Monroe County Board of Education* because the ramifications of Title IX decisions affect the world of academia as well as the arena of athletics. A level playing field cannot be created for women in sports or society if the school systems in which our children are taught do not provide a safe and fair environment for learning. Schools must be held accountable for the actions of students and employees during school hours and school functions. Without a means to enforce legal restitution in sexual harassment cases which overwhelmingly victimize females, girls and women will remain silenced by our society.

National Coalition for Sex Equity in Education

The National Coalition for Sex Equity in Education (NCSEE) was founded in 1979 to provide training opportunities and a support network for gender equity specialists in regional, state, and local education programs, funded under Title IV of the Civil Rights Act. Today, more than 600 NCSEE members represent a wide range of professional educators, including teachers, counselors, and administrators as well as equity specialists, Title IX coordinators, and vocational education equity coordinators. NCSEE provides leadership in identifying and infusing gender equity in all educational programs and processes, within parallel equity concerns of race, national origin, disability, age, religion, and sexual orientation. NCSEE members have accomplished pioneering work in peer sexual harassment in schools through their

research, writings and publications, as well as by developing and implementing relevant, effective and cutting-edge training programs. NCSEE members have also developed approaches to assist administrators and faculty with policy, procedures and appropriate intervention strategies to prevent peer sexual harassment behaviors that contribute to a hostile learning and teaching environment. NCSEE members are convinced that, if sexual harassment is to be successfully eliminated, it must be considered a form of sex discrimination actionable under Title IX of the Education Amendments of 1972.

National Organization for Women Foundation

The National Organization for Women Foundation is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with a membership of over 250,000 women and men in more than 600 chapters in all 50 states and the District of Columbia. Since its inception in 1986, a major goal of NOW Foundation has been to ensure equality and fair treatment for girls and women, particularly including freedom from sexual harassment in schools and on the job. We have a strong interest in the proper application and enforcement of Title IX to prevent peer sexual harassment.

National Women's History Project

The National Women's History Project (NWHP) was founded in 1980 to increase public recognition of women's historic contributions and accomplishments.

The NWHP initiated and continues to promote the March celebration of Women's History Month nationwide, coordinates the Women's History Network of activists across America, works with textbook publishers to increase women's representation in school materials, and facilitates community and workplace programmers' efforts to introduce women's history to out-of-school audiences. Tens of thousands of people are impacted annually by these efforts.

Northwest Women's Law Center

The Northwest Women's Law Center (NWLC) is a non-profit public interest organization that works to advance the legal rights of all women through litigation, education, legislation and the provision of legal information and referral services. Founded in 1978, the NWLC has been, *inter alia*, dedicated to challenging barriers to sexual equality in education with a focus on eradicating gender discrimination through the enforcement of Title IX. Toward that end, the NWLC has participated as counsel and as *amicus curiae* in cases throughout the Northwest, and the country, to ensure that women and girls at all educational levels have equal access to educational opportunities. The NWLC was lead counsel in *Blaire v. Washington State Univ.*, 108 Wn. 2d 558 (1987), a case that set important precedent requiring state universities to provide equal funding and scholarship opportunities for women's athletic programs. The NWLC is currently litigating several Title IX cases throughout the region that seek to ensure that girls receive equal educational opportunities in harassment-free atmospheres. The NWLC is also working directly with numerous school districts and

parent groups to monitor and enforce compliance with the mandates of Title IX. The NWLC continues to serve as a regional expert and leading advocate on Title IX and sexual harassment.

Survivors of Educator Sexual Abuse and Misconduct Emerge, Inc.

Survivors of Educator Sexual Abuse and Misconduct Emerge (S.E.S.A.M.E. Inc.) is a non-profit organization that began as a grassroots effort. S.E.S.A.M.E. Inc. is the only organization that identifies and supports individuals who were victims of sexual abuse and harassment by educators. The founder and current president were themselves individuals and family members of those who have been abused by an educator. S.E.S.A.M.E. Inc. is known nationally and internationally; its membership has grown to 700 since 1994. Both the founder and president have donated their time and energies to educating school administrators, legislators, law enforcement's mental health professionals, colleges and universities, student teachers, and junior and high school students about the devastating effects of educator sexual abuse. S.E.S.A.M.E. Inc. was formed to support victims through outreach, education, legislation, web site, and numerous media appearances to educate the public on this specific type of abuse.

Texas Civil Rights Project

The Texas Civil Rights Project is a statewide civil rights litigation and education project. In operation since 1990, the Project seeks to promote social and economic

justice. Since Fall 1993, the Texas Civil Rights Project has devoted significant resources towards Title IX litigation and education. The Project operates Stop Harassment in Public Schools (SHIPS), the nation's only full-time sexual harassment prevention project. SHIPS provides community training, conducts education research, and publishes resources on sexual harassment prevention and curriculum.

Title IX Advocacy Project

The Title IX Advocacy Project (Project) is a youth empowerment and legal/educational advocacy organization that works with young people and their adult allies to stop gender discrimination in middle schools and high schools in the greater Boston area. The Project was founded in September 1994 and currently focuses on eliminating 1) sexual harassment in school, 2) discrimination against pregnant and parenting students, and 3) gender inequity in school-based sports programs. The Project facilitates sexual harassment workshops at schools, community centers, and conferences, sponsors peer education programs, facilitates rap sessions and discussion groups with young people, provides education and assistance to young people and their families, develops age-appropriate and culturally sensitive sexual harassment policies for schools, and creates and disseminates resource materials.

Title IX Advocates

Title IX Advocates is an offshoot of Parents for Title IX, a grassroots civil rights organization started in 1992.

Title IX Advocates was started with the aim of broadening appeal to more than parents, and to establish a common base of information about Title IX and gender equity in education issues, on list serves dedicated to gender equity, such as the Feminist Jurisprudence list and the Edequity list of WEEA. Title IX Advocates provides letters of support and interest to parents and other community members around the country. It is especially interested in the application of Title IX to peer sexual harassment cases, because such harassment is one of the chief mechanisms by which girls and women are disadvantaged in education.

The United States Student Association

Founded in 1947, the United States Student Association is the nation's oldest and largest student association representing over 350 campuses and 3 million students around the country. Its mission is to increase access to education for all students regardless of race, class, gender, sexual orientation, or religion. For girls and women, sexual harassment not only restricts access to education but also involvement in education. USSA has long practiced a no-tolerance policy towards sexual harassment within its organization, in its office, at its conferences and within its membership. This policy has proved to provide a more equitable environment for all of those participating in our organization. USSA has always and will continue to fight sexual harassment and fight to tighten sexual harassment policies on campus as well as at the federal level.

Women & Philanthropy

Women & Philanthropy (W&P) is a national association of grantmakers who are interested in achieving equity for women and girls. Founded in 1977, Women & Philanthropy works to achieve its mission by encouraging the use of a gender lens approach to grantmaking decisions, and by working to get more women and people of color who support gender equity into leadership positions in organized philanthropy. Our 500 individual and institutional members include trustees, CEO's, and program officers from private, corporate, and family foundations across the country, as well as individual donors. W&P supports the Petitioner's position in *Davis v. Monroe County Board of Education* because sexual harassment, including peer sexual harassment, is a barrier to gender equity in education. W&P believes that in order to achieve equal opportunities in education, girls must remain free from sexual harassment in the school setting, including from harassment by peers.

Women Employed

Women Employed is a national organization of working women, based in Chicago, with a membership of 2,000. Since 1973, the organization has assisted thousands of working women with problems of sex discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, analyzed equal opportunity policies, and developed specific, detailed proposals for improving enforcement efforts. Women Employed strongly believes that one of the most fundamental guarantees that women and girls are entitled to

under Title IX is an equal educational opportunity free from sexual harassment.

Women Lawyers Association of Los Angeles

Women Lawyers Association of Los Angeles (WLALA) is a nonprofit organization comprised primarily of attorneys and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society including their exercise of equal rights and reproductive choice. To further these goals, WLALA files *amicus* briefs in cases that may have a significant impact on women's rights. WLALA is supporting the Petitioner in this case because it believes that in order for women to achieve equality in our society, they must have equal educational opportunities, including the opportunity to attend schools that are free of sexual harassment.

The Women's Law Center of Maryland, Inc.

The Women's Law Center of Maryland, Inc. advocates for the legal rights of women and children in Maryland. The organization was founded in 1971 to meet the special legal needs of women, especially in the areas of sex discrimination in employment and education and family law. The Women's Law Center of Maryland, Inc. has appeared as *amicus* in many cases concerning sex-based discrimination, both locally and nationally. It hosts an annual event to raise the self-esteem of girls and

promote awareness of legal processes to end sex discrimination. The Women's Law Center of Maryland, Inc. believes the issues raised in *Davis v. Monroe County Board of Education* are critical to the rights of girls to be free from sexual harassment and sex discrimination in schools.

Women's Law Project

The Women's Law Project (WLP) is a non-profit public interest legal center located in Philadelphia, PA. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. The WLP is committed to ending sexual abuse and harassment of women and children and to safeguarding the legal rights of women and children who experience sexual abuse. Toward that end, the WLP is interested in insuring a proper remedy for students who are subject to sexual harassment.
